

NOT INCLUDED IN
BOUND VOLUMES

Plains, PA
PMH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WYMAN GORDON PENNSYLVANIA, LLC

Employer

and

Case 04–RC–126196

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held May 21, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 24 for and 22 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings¹ and recommendations,² and finds that a certification of representative should be issued.

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings. We do not rely, however, on the hearing officer's findings that the Employer's witnesses exaggerated the degree to which they felt intimidated by the union agents' conduct. The witnesses' subjective feeling of intimidation is irrelevant to whether the conduct was objectionable. See

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its 1141 Highway 315, Plains, PA facility, excluding all other employees, office clerical employees, audit inspectors, guards, and supervisors (including group leaders) as defined in the Act.

Dated, Washington, D.C., April 14, 2015.

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Avante at Boca Raton, Inc., 323 NLRB 555, 560 (1997) (“The law is clear that ‘the subjective reactions of employees to alleged threats are irrelevant to the question of whether there was in fact objectionable conduct, rather the test is based on an objective standard.’”), quoting *Picoma Industries*, 296 NLRB 498 (1989).

² With respect to Objection 1, the hearing officer mistakenly applied the third-party conduct standard to determine whether statements by undisputed union agents at an April 2014 meeting held at a Holiday Inn Express hotel were objectionable. Contrary to the hearing officer, we analyze this issue under the party-conduct standard and find that the statements did not have “the tendency to interfere with the employees’ freedom of choice.” *Cedars-Sinai Medical Center*, 342 NLRB 596, 597 (2004).

Member Miscimarra agrees with the hearing officer and his colleagues that none of the allegedly objectionable employee conduct in this case requires a new election under the applicable multifactor standard set forth in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), for determining whether third-party threats warrant setting aside an election. Although Member Miscimarra agrees with that standard, he would abandon the phrase “general atmosphere of fear and reprisal” because it improperly suggests that an election cannot be set aside unless third-party threats affected nearly all eligible voters, no matter how close the tally and how serious the misconduct. See *Mastec Direct TV*, 356 NLRB No. 110, slip op. at 5–7 (2011) (Member Hayes, dissenting) (criticizing *Westwood Horizons Hotel* on this point). Contrary to the implication of the phrase, the Board has in fact properly set aside elections based on serious third-party misconduct affecting only a few determinative voters. See *Robert-Orr Sysco Food Services*, 338 NLRB 614 (2002); *Smithers Tire*, 308 NLRB 72 (1992); *Buedel Food Co.*, 300 NLRB 638 (1990); *Steak House Meat Co.*, 206 NLRB 29 (1973).

Kent Y. Hirozawa, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD